

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Delaware Standardbred Owners Association,	)	CG Docket No. 06-181
Request for Exemption from the Closed	)	
Captioning Rules	)	File No. CGB-CC-____

**PETITION FOR EXEMPTION FROM CLOSED CAPTIONING  
REQUIREMENTS**

The Delaware Standardbred Owners Association (“DSOA”), pursuant to Section 79.1(f) of the Commission’s rules, respectfully requests that its video program “Post Time” be exempt from the closed captioning requirements.<sup>1</sup> “Post Time,” a weekly half-hour program airing on WBOC-TV in Salisbury, Maryland, provides insight into harness racing on the Delmarva Peninsula. Through interviews, human interest features, profiles of the equine athletes, and race recaps, host and producer Heather Vitale informs local viewers and provides a unique window into an industry that plays an important role in the local economy.

DSOA appreciates that the Commission is charged with making video programming accessible to the hearing impaired. At the same time, DSOA respectfully submits that “Post Time” exemplifies precisely the type of “independent,” “specialized,” and “local” programming that Congress and the Commission intended to exempt from its closed captioning rules, lest such programming cease to be produced.<sup>2</sup> Harness racing, once a fixture on local television, has all but disappeared from the airwaves. Yet the

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<sup>1</sup> 47 C.F.R. § 79.1(f).

<sup>2</sup> *Closed Captioning of Video Programming*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 02221, ¶ 107 (2014).

same captivating backstories on horses and drivers and the sport's unique brand of excitement remain. It is through "Post Time" – and "Post Time" only – that these local stories are told.

As detailed below, DSOA itself has no available funds to commit to captioning the program and compliance with the rules would prove economically burdensome. Production of "Post Time" is not DSOA's core mission. DSOA commits its cash on hand to backstop both the self-funded health insurance plan and pension fund that it administers for its members. It has committed what resources it has, with supplemental support from certain of the local tracks, to production of the program. As a result, from DSOA has endeavored to procure support for closed captioning from its television broadcast partner and potential sponsors, to no avail. Nonetheless, "Post Time" serves the public interest by showcasing a unique sport with an important local impact that is otherwise absent from television. Without a closed captioning exemption, DSOA will be forced to cease production: (1) depriving viewers of almost all coverage of harness racing; (2) causing the layoff of Ms. Vitale, a single mother with a physically-challenged child; (3) destroying the business of the show's cameraman and editor; and (4) striking another blow to the struggling economy of the Delmarva Peninsula by taking away coverage of a struggling sport that helps support numerous local jobs.

## **I. BACKGROUND**

DSOA, a non-profit trade association representing approximately 650 Standardbred horsemen and horsewomen (together the "horsemen") who compete at Dover Downs and Harrington Raceway in Delaware, produces and provides primary funding for "Post Time." Dover Downs, Harrington Raceway, and Ocean Downs, a harness track on Maryland's Eastern Shore that races for 8 weeks in the summer, provide

supplementary funding for the show. With a staff of four full-time employees and three part-time employees, DSOA also manages the horsemen's health benefits and pension fund, represents the horsemen before the Delaware General Assembly and Delaware Harness Racing Commission, and negotiates on behalf of the horsemen with Dover Downs and Harrington Raceway.

It was just 35 years ago that harness horsemen like Herve Filion and Stanley Dancer received widespread newspaper and television coverage to match the wild popularity of the sport.<sup>3</sup> "Fast forward to 2014 . . . and harness tracks are mostly empty. Whether young or old, people rarely speak about . . . heading to track for a night of fun."<sup>4</sup> That's why "Post Time" is so important – it is often the lone media outlet for a sport with unique stories to tell, thrilling races, and local economic significance.

"Post Time" currently airs Sunday mornings at 11:30 a.m. on WBOC-TV, Salisbury, Maryland, a locally-owned television station serving the Eastern Shore. The Program has been broadcast since 1998, thanks in large part to the tireless work of writer, producer, and on-air personality Heather Vitale, an employee of DSOA. Heather's passion for Standardbred racing shines through each program, whether it be through a vignette about a veteran horsemen, a story about an equine athlete that has overcome the odds to get on the track, or exciting highlights of the week's races. Assisting Heather, a single mother with two young children, is Robert Faust, an independent contractor who provides camera work, editing, and post-production for "Post Time." Robert, who also

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<sup>3</sup> Derick Giwner, *Harness Racing: Alive and Kicking*, Daily Racing Form (Apr. 2, 2014), available at <http://www.drf.com/blogs/harness-racing-alive-and-kicking>.

<sup>4</sup> *Id.*

supports a young family, relies on producing “Post Time” as his primary source of business.

The high quality of “Post Time” promotes interest in harness racing, a vital industry that employs thousands on the Delmarva Peninsula. According to the U.S. Department of Labor, more than half the counties on the Delmarva Peninsula have unemployment rates above the national average.<sup>5</sup> For instance, in Worcester County, Maryland, nearly twice as many people go jobless than in the rest of the United States. Yet harness racing “positively impacts the local region of Delmarva from an economic standpoint,” “increasing the employment rate and also encouraging people to move [to] Delmarva from all over the country to take [part] in th[e] harness horse racing industry.”<sup>6</sup> Indeed, the industry employs about one person for every five horses that need care.<sup>7</sup> Thousands service the industry, such as blacksmiths, veterinarians, grain farmers, hay farmers, straw farmers, sawmills, and truck and trailer dealers. Needless to say, “Post Time” positively impacts these workers and industries.

## **II. THE PROVISION OF CLOSED CAPTIONING FOR POST TIME WOULD BE ECONOMICALLY BURDENSOME**

The exhibits attached herein demonstrate that providing closed captioning for “Post Time” would be economically burdensome. Simply put, the additional annual

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<sup>5</sup> U.S. Dept. of Labor, Bureau of Labor Statistics, *Unemployment on the Delmarva Peninsula by County – March 2014* (Mar. 2014), available at <http://www.bls.gov/ro3/urdelmarva.htm>.

<sup>6</sup> Gulnihal Ozbay, et al, *Overview on Sustainable Animal Farming in Relationship to Climate Change in Delmarva*, J. Earth Sci. Clim. Change (2013), available at <http://omicsonline.org/open-access/overview-on-sustainable-animal-farming-in-relationship-to-climate-change-in-delmarva-2157-7617.1000175.pdf>.

<sup>7</sup> *Id.*

expense of captioning would push “Post Time” past the tipping point and DSOA would be forced to cease production.

*Cost of Captioning.* DSOA received quotes for captioning “Post Time” from VITAC and the National Captioning Institute. *See* Exhibits B, C. VITAC’s quote, dated July 9, 2014, for roll-up captioning and encoding is \$175 per episode, which translates to annual cost of \$9,100. On June 11, 2014, the National Captioning Institute provided quotes of \$287.50 per episode for roll-up captioning and \$337.50 for pop-on captioning. These translate to an annual cost of \$14,950 and \$17,500 per year, respectively.

*Video programming distributor assistance.* DSOA contacted WBOC-TV for assistance in providing captions for “Post Time.” WBOC-TV, which competes in the tiny No. 142-ranked Salisbury, MD Designated Market Area, rejected this request, stating that it “does not have the ability to provide closed captioning for ‘Post Time.’ . . . [W]e simply do not have the time equipment or software to provide the service at this time.”

*Additional Sponsorships.* DSOA sought additional funding from both Dover Downs and Harrington Raceway and was rejected. *See* Exhibits E, F. Harrington Raceway cited “budget constraints,” and Dover Downs noted that it is “in a very tough financial situation where we must consider all of our expenditures very carefully.” *See id.* Notably, Dover Downs’ revenue has fallen steadily since 2006.<sup>8</sup>

*Financial Resources.* Included here are financial statements for DSOA prepared by Raymond F. Book & Associates, PA for the fiscal years 2012 and 2013. *See* Exhibits G and H. DSOA administers the DSOA Horseman’s pension fund, which has been

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<sup>8</sup> Annys Shin, *Horseshoe Casino in Baltimore Opening Soon, You’d Better Believe Rivalry Is Fierce*, Washington Post (Aug. 15, 2014), available at [http://www.washingtonpost.com/local/horseshoe-casino-in-baltimore-opening-soon-youd-better-believe-rivalry-is-fierce/2014/08/15/9cb22e44-1da9-11e4-ab7b-696c295ddfd1\\_story.html](http://www.washingtonpost.com/local/horseshoe-casino-in-baltimore-opening-soon-youd-better-believe-rivalry-is-fierce/2014/08/15/9cb22e44-1da9-11e4-ab7b-696c295ddfd1_story.html).

accumulating since 2001 and represents funds belonging to hundreds of participating horsemen, most of whom are vested in the plan. In addition, DSOA self-funds its health insurance plan for more than 300 of its participating members.

As explained in the CPA statement in Exhibit J, the cash balances presented in financial statements are used as strictly as a hedge against potential increases in the cost of insurance and market fluctuation in pension fund investments and are not available for production expenses. Regarding the pension fund, the statement articulates that “it is wise to further keep fixed assets (cash) available in addition to equity investments to further ensure the safekeeping of pension monies.” *See* Exhibit J. In addition, regarding health insurance, “[w]hile 2013 was a very good year with few insurance claims payable by the organization, the board understands that it cannot rely on this recurring. The board took the position that the organization needs to keep more cash on hand to pay for health insurance claims when they arise.” *See id.* For example, the DSOA health insurance plan carries an \$80,000 stop loss per insured. When it is a “very bad year” with multiple shock and injury claims payable by DSOA, the cash reserve vanishes quickly.

*Impact on Programming Activities.* The annual cost of closed captioning would increase the cost of producing “Post Time” by at least 10% (assuming the least costly VITAC estimate). DSOA simply cannot absorb the cost of captioning. Rather than take on the added burden of providing closed captioning, DSOA would likely cease production of “Post Time.” Long-time employee Heather Vitale would lose her job. Freelance technical producer Robert Faust would lose his biggest client, and his livelihood would suffer.

“Post Time” provides a spotlight on the many great aspects of the harness racing, with unique, in-depth coverage that otherwise would be absent from the market. Increasing the popularity of harness racing is a national problem, and Ms. Vitale’s work on “Post Time” stands out as an important contribution to the sport’s health.<sup>9</sup> It is axiomatic that if unique programming that “Post Time” provides disappeared, consumers would continue to lose interest in the harness racing industry. And if the harness racing industry suffers, it will have a domino effect on the numerous Delmarva Peninsula industries that rely on horseracing for jobs. As explained above, any further wane in popularity for harness racing will affect deleteriously countless jobs, from grain farmers to farriers, in an already depressed local economy.

### **III. CONCLUSION**

Based on the foregoing, DSOA respectfully asks that the Commission grant “Post Time” an exemption from the closed captioning rules.

\_\_\_\_\_/s/  
Andrew Markano  
President  
Delaware Standardbred Owners Association  
803 Walker Square  
Dover, DE 19904

August 28, 2014

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<sup>9</sup> See Gwiner, *supra* n.3.

## **List of Exhibits**

### **Exhibit A**

Affidavit of Andrew Markano, President, Delaware Standardbred Owners Association

### **Exhibit B**

Closed captioning quote for “Post Time” from VITAC

### **Exhibit C**

Closed captioning quotes from the National Captioning Institute

### **Exhibit D**

Letter from Dave Speicher, General Sales Manager, WBOC-TV to Salvatore DiMario, DSOA

### **Exhibit E**

Letter from James K. Boese, Chief Operating Officer of Racing, Harrington Raceway & Casino to Salvatore DiMario, DSOA

### **Exhibit F**

Letter from Charles B. Lockhard, Vice-President – Horse Racing, Dover Downs Hotel & Casino to Salvatore DiMario, DSOA

### **Exhibit G**

Raymond F. Book & Associates, Certified Public Accountants, Independent Accountant’s Review Report, Delaware Standardbred Owners’ Association, Inc., Financial Statements, September 30 2012 and 2011

### **Exhibit H**

Raymond F. Book & Associates, Certified Public Accountants, Independent Accountant’s Review Report, Delaware Standardbred Owners’ Association, Inc., Financial Statements, September 30 2013 and 2012

### **Exhibit J**

Letter from Christine Lawrence, CPA, Raymond F. Book & Associates to Salvatore DiMario



# Exhibit A

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**AFFIDAVIT OF ANDREW MARKANO**

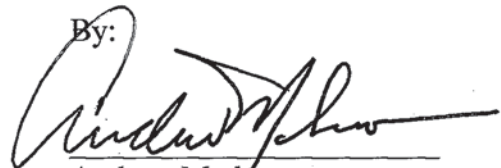
1. My name is Andrew Markano. I have the capacity to provide this Affidavit and am over the age of 21 and under no disability. I am a citizen and resident of Frankford, Delaware.

2. I am President of the Delaware Standardbred Owners Association.

3. I have read the accompanying Petition for Exemption from Closed Captioning Requirements ("Petition").

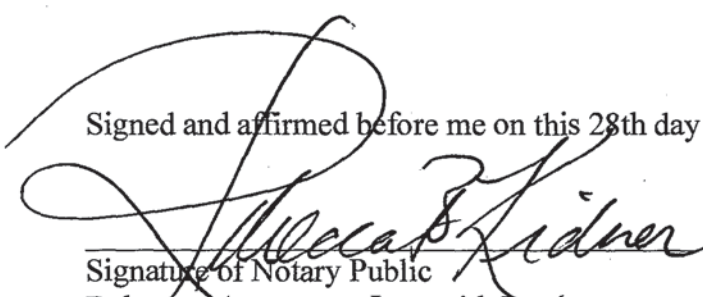
I declare that the accompanying Petition is true, correct and complete to the best of my personal knowledge, information, and belief.

By:



Andrew Markano  
August 28, 2014

Signed and affirmed before me on this 28th day of August, 2014 by Andrew Markano.



Signature of Notary Public  
Delaware Attorney at Law with Power to act as  
Notary Public per 29 Del. C. §4323(a)(3)

**REBECCA BATSON KIDNER**  
Delaware Attorney at Law with  
Power to act as Notary Public  
per 29 Del. C. §4323(a) (3)

# Exhibit B

July 9, 2014

Sal DiMario  
Executive Director  
Delaware Standardbred Owners Association, Inc.  
830 Walker Square, Suite 11-2  
Dover, DE 19904

Dear Sal,

This letter will serve as confirmation of VITAC's pricing to provide Offline closed captioning and encoding services for your 52 x 30:00 episode series "Post Time."

As I understand from our conversation, your association produces the above weekly half-hour television show about harness racing on the Delmarva Peninsula. The program airs at 11:30 a.m. on Sunday mornings on WBOC in Salisbury, Maryland. You would send us a digital source video file in AVI format on Wednesday of each week, and we would return a CC-encoded digital file in AVI format to WBOC directly by Friday afternoon each week.

Based on this information, VITAC's rate to provide Offline Roll-up style caption preparation + encoding to AVI digital format will be --

- CC prep @ **\$125** / 30:00 episode
  - Transcription, research, timing and placement of CC text, plus multi-step QC review process
  - No rush fees, unless 24-hour turnaround is requested, in which case a 100% premium applies on the CC prep charge
- CC encoding @ **\$50** / 30:00 episode
  - We'd deliver back to WBOC in the same format as your source video (assuming .DV extension) or other format that WBOC can work with
- TOTAL = **\$175** / 30:00 episode

Rates for additional services beyond this scope of work will need to be reviewed and priced separately.

We look forward to the opportunity of working with you to make your programming accessible through our services.

Regards,

Darryn Cleary  
Senior Vice President of Sales

RE: Quote (VITAC - Delaware Standardbred Owners Association, Inc.)

**Subject:** RE: Quote (VITAC - Delaware Standardbred Owners Association, Inc.)

**From:** Darryn Cleary <Darryn.Cleary@vitac.com>

**Date:** 6/11/2014 4:36 PM

**To:** Sal DiMario <delsoa@dmv.com>

You're welcome.

Once you get the info on the sample digital episode, just drop a line to me and copy client [clientservices@vitac.com](mailto:clientservices@vitac.com) and we'll confirm that we can work with it, which we should be able to, based on what my encoding technician is telling me.

The specific pricing proposal for "Post Time" is highlighted below @ \$175 / episode, based on getting your video in on Wednesday and returning the CC'd digital video file to WBOC on Friday

-- Darryn

**From:** Sal DiMario [mailto:[delsoa@dmv.com](mailto:delsoa@dmv.com)]

**Sent:** Wednesday, June 11, 2014 4:24 PM

**To:** Darryn Cleary

**Subject:** Re: Quote (VITAC - Delaware Standardbred Owners Association, Inc.)

Darryn; Thanks for the prompt reply. I am not technical so let me find out about the file, etc. Once I get that is it possible to have the quote or proposal specific to "Post Time", I'll be in touch, Sal.

On 6/11/2014 4:10 PM, Darryn Cleary wrote:

Hi, Sal –

No worries.

This sounds fairly straightforward, but we'd like to get a sample of one of your AVI files to confirm that we can work with it. My encoding techs tell me that most AVI files have a .DV extension. Can you confirm if that's what your file is, and how big is the average file size? We have a secure FTP site, or we can accept content via hard drive, or through Aspera or Signiant as well. My colleagues in our expert Client Sales & Services (CSS) group can help to get you Guest login / password info to post an episode for our review -- [clientservices@vitac.com](mailto:clientservices@vitac.com) or [724-514-4077](tel:724-514-4077).

We keep pricing simple –

- CC prep @ **\$125** / 30:00 episode
  - Transcription, research, timing and placement of CC text, plus multi-step QC review process
  - No rush fees, unless 24-hour turnaround is requested, in which case a 100% premium applies on the CC prep charge
- CC encoding @ **\$50** / 30:00 episode
  - We'd deliver back to WBOC in the same format as your source video (again, assuming .DV extension) or other format that WBOC can work with
- **TOTAL = \$175** / episode

In order to re-establish you as a client in our system, we'd just need one of the attached